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IN THE
Supreme Court of The United States

October Term, 1966

No. 45

RONALD R. CICHOS,

Petitioner,

v.

STATE OF INDIANA,

Respondent.

**APPENDIX TO
BRIEF FOR PETITIONER**

JOHN P. PRICE,
CLEON H. FOUST,
Indianapolis, Indiana,

WARREN BUCHANAN,
JOHN B. McFADDIN,
Rockville, Indiana,
Attorneys for Petitioner.

HAMILL, PRICE & CHAMP
515 Circle Tower Building,
Indianapolis, Indiana,
Of Counsel.

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APPENDIX
CONSTITUTIONAL PROVISIONS INVOLVED

Amendment V—Capital Crimes; Double Jeopardy; Self-Incrimination; Due Process; Just Compensation for Property

“No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any

person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

AMENDMENT XIV—Citizenship; Privileges and Immunities; Due Process; Equal Protection; Apportionment of Representation; Disqualification of Officers; Public Debt; Enforcement

"Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATUTES INVOLVED

Burns' Indiana Statutes, Annotated, Section 9-1901

"Definition: A new trial is a re-examination of the issues in the same court. (Acts 1905, ch. 169, Sec. 280, 58.)"

Burns' Indiana Statutes, Annotated, Section 9-1902

"Effect of granting—Former verdict not to be referred to in argument.

"The granting of a new trial places the parties in the same position as if no trial had been had; the former verdict can not be used or referred to, either, in the evidence or in the argument. (Acts 1905, ch. 169, Sec. 281, p. 584)"

Burns' Indiana Statutes, Annotated, Section 47-2001

"Driving—(a) Reckless Homicide. Any person who drives a vehicle with reckless disregard for the safety of others and thereby causes the death of another person shall be guilty of the offense of reckless homicide. Any person convicted of reckless homicide shall be punished by a fine of not less than one hundred dollars (\$100) or more than one thousand dollars (\$1,000) or by imprisonment in the state farm for a determinate period of not less than sixty (60) days and not more than six (6) months, or by both such fine and such imprisonment, or by a fine of not more than one thousand dollars (\$1,000) and imprisonment in the state prison for an indeterminate period of not less than one (1) year or more than five (5) years."

Burns' Indiana Statutes Annotated, Section 10-3405

"*Manslaughter—Penalty.* Whoever voluntarily kills any human being without malice, expressed or implied, in a sudden heat, or involuntarily in the commission of some unlawful act, is guilty of manslaughter, and on conviction shall be imprisoned not less than two (2) years nor more than twenty-one (21) years. (Acts 1941, ch. 148, Sec. 2, p. 447)"

**OPINION OF
THE SUPREME COURT OF INDIANA
IN FIRST CICHOS CASE**

No. 29,954

July 2, 1962

Ronald R. Cichos v. State of Indiana

Jackson, Justice—

“Appellant was charged by a second amended affidavit in two (2) counts with (a) violation of Acts 1939, ch. 48, § 52, p. 289, being § 47-2001a, Burns' 1952 Replacement, defining the offense of Reckless Homicide and (b) with violation of Acts 1941, ch. 148, § 2, p. 447, being § 10-3405, Burns' 1956 Replacement, defining the offense of involuntary manslaughter. Trial was had by jury resulting in the verdict finding the defendant guilty of the offense of reckless homicide as charged in count one of the affidavit. Thereafter, on February 16, 1960, the court sentenced the appellant to a term of not less than one (1) year nor more than five (5) years in the Indiana Reformatory and fined him in the sum of \$500 plus costs of the trial.

“The record in this cause is so voluminous that it is almost impossible to summarize without unduly extending this opinion. Appellant's original brief consisting of over 450 pages, appellee's brief consisting of 55 pages and the transcript consisting of 1203 pages.

“It will suffice to say that the sufficiency of the charges were challenged by motions to quash the affidavits, appellant also filed among others, motions to produce and suppress evidence, a motion for mistrial, a motion in arrest of judgment, a motion for a Venire De Novo and motion for a new trial containing five causes, 107 specifications and six accompanying affidavits.

"Appellant's assignment of error is the single ground that '(t)he Court erred in overruling the appellant's motion for a new trial.'

"Basically the contentions here to be determined may be narrowed to the alleged error in permitting into evidence the results of certain blood tests allegedly made from samples taken from the appellant and from alleged error in refusing to give certain instructions, hereinafter discussed, tendered by the appellant.

"The factual situation preceding the events culminating in the institution of the prosecution, from which stems this appeal, may be briefly summarized as follows:

"On September 28, 1958, appellant was involved in an automobile collision on U. S. Highway No. 36 about one mile west of Bellmore in Parke County, Indiana. Such collision resulting in the deaths of Mr. and Mrs. Frank Barber and the injury of appellant, he suffering a bilateral fracture of the lower jaw, laceration of the scalp, cerebral concussion rendering him unconscious and a fracture of the right forearm. The collision occurred at approximately 9:30 o'clock a.m.

"Prior to the collision appellant had stopped at Sparks' restaurant in Hollandsburg. While there, he and several other persons, including one William Lowe, drank coffee. After drinking coffee and spending fifteen or twenty minutes in the restaurant while in the process, appellant and Lowe left the restaurant, appellant getting into his car and driving off in the direction of Bellmore.

"Within minutes after leaving the restaurant appellant was involved in the head-on collision resulting in the deaths and injuries heretofore mentioned.

"The instructions tendered by the appellant and refused by the court numbered 16, 21, 24, 25, 26, 42, 49 and 63, in pertinent part, read as follows:

'Instruction No. 16

'Proof that the accident which resulted in the deaths of Frank Glen Barber and Shella Mae Barber arose out of the inadvertence, lack of attention, forgetfulness or thoughtlessness of the defendant, Ronald Richard Cichos, as the driver of the other automobile involved in the accident, or from an error of judgment on the part of the said Ronald Richard Cichos, will not support a charge of reckless homicide or of involuntary manslaughter, and in that event you must find the defendant not guilty of the charges of reckless homicide and involuntary manslaughter.'

'Instruction No. 21

'Members of the jury, I instruct you, that if Ronald Richard Cichos was merely negligent in operating his automobile, then he is not criminally liable, and your verdict must be not guilty.'

'Instruction No. 24

'I instruct you that if Ronald Richard Cichos due to error of judgment caused the collision, then he cannot be guilty of reckless homicide or involuntary manslaughter, and your verdict must be not guilty.'

'Instruction No. 25

'I instruct you if Ronald Richard Cichos due to forgetfulness or thoughtlessness, caused the collision, then he cannot be guilty of reckless homicide or involuntary manslaughter, and your verdict must be not guilty.'

'Instruction No. 26

'Members of the jury, I instruct you, that one must

intend to do, or omit to do the act resulting in injury to another in order to be guilty of reckless homicide or involuntary manslaughter. Now if you believe that the defendant, Ronald Richard Cichos, did not intentionally commit the act and he was only negligent, then your verdict must be not guilty.'

'Instruction No. 42

'Members of the jury, I instruct you that if the defendant was merely inadvertent in his driving then he cannot be found guilty of driving with reckless disregard for the safety of others.'

'Instruction No. 49

'Members of the jury, I instruct you, if the defendant, Ronald Richard Cichos, through inadvertence, or lack of attention or thoughtless negligence, failed to see the other car involved in this accident this would not be sufficient to support a conviction under the statute and you must find him not guilty.'

'Instruction No. 63

'Members of the jury, I instruct you, negligent conduct without more will not support a finding of guilty for reckless homicide and involuntary manslaughter arising out of an automobile accident.'

Appellant contends that he was entitled to have the jury instructed that mere negligence in the operation of a motor vehicle (although civil liability may arise) does not create a criminal liability.

"The substance of these instructions was not covered by any instructions given by the court.

"It has been well established in Indiana that mere negligent operation of a motor vehicle does not render one so

operating it criminally liable,

1. should a death ensue. *Danville v. State* (1919), 188 Ind. 373, 123 N. E. 689; *Kimmel v. State* (1926), 198 Ind. 444, 154 N. E. 16; *Beeman v. State* (1953), 232 Ind. 683, 115 N. E. 2d 919.

"Whether the evidence in this case establishes that the deaths alleged in the indictment occurred from a mere accident, from negligent conduct or from

2. willful and/or wanton misconduct so as to amount to recklessness, is dependent on the

weight given the various aspects of the case and the evidence by the jury. The very purpose of the jury is to determine, after deliberation and pursuant to the court's instructions, the legal category into which the jury feels the defendant's conduct falls. The appellant's theory of the evidence and the law establishing such theory was never given to the jury in any instructions.

"It is therefore our decision that the failure to give appellant's tendered instructions above numbered and set forth, constituted error as requires a reversal of this cause.

"Other error assigned need not be, and is not here decided.

"Judgment reversed and cause remanded with instructions to sustain appellant's motion for a new trial and for further proceedings not inconsistent with this opinion.

"Arterburn, C. J., Bobbitt and Landis, JJ., concur.

"Achor, J., concurs in result."

JOHN P. PRICE,
CLEON H. FOUST,
Indianapolis, Indiana,

WARREN BUCHANAN,
JOHN B. McFADDIN,
Rockville, Indiana,

Attorneys for Petitioner.

HAMILL, PRICE & CHAMP
515 Circle Tower Building,
Indianapolis, Indiana,
Of Counsel.